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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/544,683	04/07/2000	Antonius Arnoldus Christiaan Jacobs	99471 US	1432

31846 7590 02/06/2003

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EXAMINER

PORTNER, VIRGINIA ALLEN

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 02/06/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/544,683

Applicant(s)

Jacobs et al

Examiner

Portner

Art Unit

1645



-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Nov 13, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9, 10, and 12-17 is/are pending in the application.
- 4a) Of the above, claim(s) 4-7, 10, and 12-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-7, 9, 10, and 12-17 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

Art Unit: 1645

### **DETAILED ACTION**

Claims 1-7,9-10, 12-17 are pending.

Claims 4-7, 10, 12-17 are non-elected claims.

Claims 1-3 and 9 are under consideration.

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Rejections Withdrawn***

2. Claim 3 rejected under 35 U.S.C. 112, second paragraph which recites the term "R2", in light of the interview held November 5, 2002.

3. Claims 1-2 and 9 rejected under 35 U.S.C. 102(b) as being anticipated by Blaser et al (1986) , in light of the claim having been amended to recite the term "chicken" not disclosed by Blaser et al.

#### ***Rejections Maintained***

4. Claims 1-3 and 9 rejected under 35 U.S.C. 102(b) as being anticipated by Cawthraw et al (1994), as previously applied to claims 1-3, for reasons of record in paper number 6, paragraph

12.

#### ***Response to Arguments***

Art Unit: 1645

5. Applicant's arguments filed November 12, 2002 have been fully considered but they are not persuasive.
6. The rejection of claims 1-3 and 9 under 35 U.S.C. 102(b) as being anticipated by Cawthraw et al (1994), is traversed on the grounds that the claims have been amended to recite "consisting essentially of" and "chicken antibodies" and obviate this rejection.
7. It is the position of the examiner that the composition of Cawthraw et al which is a chicken antibody composition (see abstract), raised to the parent strain for R2 (see Materials and Methods, bacterial strains), comprised antibodies directed to *Campylobacter jejuni* (hyperimmune chicken serum), but still reads on the instantly claimed invention because the additional antibodies to those which recognize the about 97 kDa, 60 kDa and 13 kDa bands (see Figures 3, frame B, A, C and D) and Figure 2) do not change the basic and novel characteristic of being chicken antibodies directed to *Campylobacter jejuni*. The claims do not exclude the presence of antibodies to flagella, but only positively recite the presence of three antibodies which must be present and immunoreact with *Campylobacter*, and must prevent colonization of *Campylobacter* in animals. The antibodies of Cawthraw et al are taught to provide passive immunization protection (page 348, col. 1, first paragraph). The reference anticipates the instantly claimed invention.

Clearly the composition of Cawthraw et al, though made by a different process than the process limitation recited in the claim, "raised against a flagellaless *Campylobacter* strain", anticipates the instantly claimed invention, as evidenced by the disclosure of the document which disclosed a composition of chicken antibodies which provided protection against infection, and

Art Unit: 1645

was raised to the parental strain of Campylobacter of strain R2, and would therefore produce the same or equivalent antigens produced by strain R2, and would therefore induce antibodies to the same or equivalent antigens produced by Campylobacter strain R2.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginny Portner whose telephone number is (703)308-7543. The examiner can normally be reached on Monday through Friday from 7:30 AM to 5:00 PM except for the first Friday of each two week period.

Art Unit: 1645

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909. The fax phone number for this group is (703) 308-4242.

The Group and/or Art Unit location of your application in the PTO will be Group Art Unit 1645. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to this Art Unit.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Vgp

February 3, 2003

  
**LYNETTE R. F. SMITH**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER**